No. 06-1287

IN THE

Supreme Court of the United States

CSX TRANSPORTATION, INC.

Petitioner,

v.

STATE BOARD OF EQUALIZATION OF THE STATE OF GEORGIA; BART L. GRAHAM, AS COMMISSIONER OF REVENUE OF THE STATE OF GEORGIA; RUSSELL W. HINTON, AS STATE AUDITOR OF THE STATE OF GEORGIA; AND GENA L. ABRAHAM, AS DIRECTOR OF THE GEORGIA STATE PROPERTIES COMMISSION,

Respondents.

On Writ of Certiorari
To the United States Court of Appeals
for the Eleventh Circuit

BRIEF OF MULTISTATE TAX COMMISSION AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENTS

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BRIEF OF MULTISTATE TAX COMMISSION as *AMICUS CURIAE* IN SUPPORT OF RESPONDENTS[1]

INTEREST OF *AMICUS CURIAE*

Amicus curiae Multistate Tax Commission (Commission) files this brief in support of the Georgia State Board of Equalization and its individual members, including the State Revenue Commissioner (State). The Commission agrees with the State that Section 306 of the Railroad Revitalization and Regulatory Reform Act of 1976 (4-R Act or the Act), currently codified at 49 U.S.C. § 11501, does not give federal district courts jurisdiction to review a state's choice of reasonable methodology for estimating "true market value" of railroad property.

The Commission is the administrative agency for the Multistate Tax Compact (Compact), which became effective in 1967. *See* RIA All States Tax Guide ¶ 701 *et seq.*, (2005). Today, forty-seven states and the District of Columbia are members of the Commission. Twenty have legislatively established full membership. Seven are sovereignty members and twenty-one are associate members.[2] This Court upheld

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[1] No counsel for any party authored this brief in whole or in part. Only *amicus* Multistate Tax Commission and its member states through the payment of their membership fees made any monetary contribution to the preparation or submission of this brief. This brief is filed by the Commission, not on behalf of any particular member state. Finally, this brief is filed with the consent of the parties.

[2] Compact Members: Alabama, Alaska, Arkansas, California, Colorado, District of Columbia, Hawaii, Idaho, Kansas, Michigan, Minnesota, Missouri, Montana, New Mexico, North Dakota, Oregon, South Dakota, Texas, Utah and Washington. Sovereignty Members: Georgia, Kentucky, Louisiana, Maryland, New Jersey,

the validity of the Compact in *United States Steel Corp.* v. *Multistate Tax Comm'n*, 434 U.S. 452 (1978).

The purposes of the Compact are to: (1) facilitate proper determination of State and local tax liability of multistate taxpayers, including equitable apportionment of tax bases and settlement of apportionment disputes, (2) promote uniformity or compatibility in significant components of tax systems, (3) facilitate taxpayer convenience and compliance in the filing of tax returns and in other phases of tax administration, and (4) avoid duplicative taxation. *See* Compact, Art. I. These purposes are central to the very existence of the Compact, which was the states' answer to an urgent need for reform in state taxation of interstate commerce. *See e.g.*, H.R. Rep. No. 89-952, Pt. VI, at 1143 (1965). If the states failed to act, Congress stood ready to impose reform itself through federal legislation that would preempt and regulate state taxation.[3]

The promise of increased uniformity established by the states' adoption of the Compact was critical to preserving the recognized sovereignty the States enjoyed, and continue to

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West Virginia and Wyoming. Associate Members: Arizona, Connecticut, Florida, Illinois, Iowa, Indiana, Maine, Massachusetts, Mississippi, Nebraska, New Hampshire, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont and Wisconsin.

[3] The Willis Committee, a congressional study of state taxation mandated by Title II of Pub. L. No. 86-272, 73 STAT. 555, 556 (1959), made extensive recommendations as to how Congress could regulate state taxation of interstate and foreign commerce. *See generally Interstate Taxation Act: Hearings on H.R. 11798 and Companion Bills Before Special Subcomm. on State Taxation of Interstate Commerce of the House Comm. on the Judiciary*, 89th Cong., 2d Sess. (1966).

enjoy, with respect to taxation of interstate commerce. Preserving state tax sovereignty under our vibrant federalism remains a key purpose of the Commission.

The importance the Commission attaches to the present case, and our motivation in filing this brief, lies in this goal of preserving states' authority to determine their own tax policies within federal constitutional and statutory limitations, and in protecting that authority from federal interference beyond that clearly mandated by Congress. The Commission agrees with the State of Georgia, the Fourth Circuit Court of Appeals and the Eleventh Circuit Court of Appeals, that Congress has not clearly expressed an intent in the 4-R Act to interfere with a state's exercise of sovereignty by subjecting its choice of a reasonable property valuation methodology to review in federal district courts. *See Chesapeake Western Ry.* v. *Forst*, 938 F.2d 528 (4th Cir. 1991), *cert. den.*, 503 U.S. 966 (1992); *CSX Transportation, Inc.* v. *State Bd. of Equalization*, 472 F.3d 1281 (11th Cir. 2006). The Petitioner's expansive interpretation of the federal courts' powers under the Act would result in unnecessary and burdensome interference with state sovereignty in violation of federalist principles.

SUMMARY OF THE ARGUMENT

A State's choice of methodology for estimating true market value of property is an important component of its fundamental power to tax. Legislative history surrounding the adoption of the 4-R Act suggests Congress was well aware of the role of states' valuation methodologies in determining effective assessment ratios for railroad property, and of the importance of this policy choice to the States. Yet, there is no mention of pre-emption, or of explicit grant of federal district court authority to review these important methodologies,

in the language of the Act. Had Congress intended to interfere with state's tax sovereignty in choosing reasonable valuation methodologies for railroads, it would have spoken with clarity and precision. In the absence of such clarity, principles of federalism compel the finding that a state's choice of reasonable valuation methodology should not be subject to review and potential revision in federal district courts.

ARGUMENT

PRINCIPLES OF FEDERALISM COMPEL AGAINST A BROAD CONSTRUCTION OF THE ACT WHICH WOULD ALLOW FEDERAL DISTRICT COURT REVIEW OF A STATE'S CHOICE OF RAILROAD PROPERTY VALUATION METHODOLOGY

The federal Tax Injunction Act, 28 U.S.C. § 1341, prohibits federal district court interference with matters of state taxation where a "plain, speedy and efficient" remedy exists in state court. The 4-R Act provides a limited exception to the Tax Injunction Act. 49 U.S.C. § 11501. Specifically, subsection (c) of §11501 of the 4-R Act allows federal district court review where necessary to prevent a State from committing any one of four acts deemed to "unreasonably burden and discriminate against interstate commerce...." with respect to railroads. The 4-R Act does not allow federal district court review of *any* state action that arguably could constitute discrimination against railroads in some form,[4] but

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[4] Other enactments of Congress contain broader language prohibiting States from taxing a particular activity or industry differently or at all. *Cf.*, 15 U.S.C. § 391, regarding taxation of energy generation; 43 U.S.C.

instead allows review only of those actions enumerated in subsection (b) of §11501. *See Department of Revenue of Oregon* v. *ACF Industries, Inc.*, 510 U.S. 332 (1994) (4-R Act does not limit states' discretion to exempt non-railroad property, but not railroad property, from generally applicable *ad valorem* property taxes.)

In this case, CSX Transportation, Inc. (Petitioner) alleges the State violated subsection (b)(1) of the 4-R Act by assessing railroad property at a ratio to true market value that was higher than the ratio used to assess other commercial and industrial property. Under subsection (b)(1), a State may not:

> *assess* rail transportation property at a value that has a *higher ratio* to the true market value of the rail transportation property *than the ratio* that the assessed value of other commercial and industrial property in the same assessment jurisdiction has to the true market value of the other commercial and industrial property.

49 U.S.C. § 11501(b)(1)

Georgia's statutes do not present a facial violation of subsection (b)(1): the assessment ratio for both types of property is set at 40% of true market value. Code of Georgia, § 48-5-7(a) (1981). Nonetheless, Petitioner argues that the effective assessment ratio for railroad property is higher than the statu-

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§ 1333(a)(2), regarding taxation of outer-continental shelf activity; 47 U.S.C. § 151 Notes, regarding moratorium on internet taxes.

torily-prescribed ratio, and thus higher than the assessment ratio for other commercial and industrial (C&I) property, in violation of subsection (b)(1). According to the Petitioner, the effective assessment ratio for railroad property is higher than the statutory ratio because the state's valuation methodology produces a higher estimate of true market value than that produced by Petitioner's own proposed methodology. Brief of Petitioner, pp. 16 -17.

Thus, this case raises the question left unanswered in *Burlington Northern Railway Co.* v. *Oklahoma Tax Comm'n,* 481 U.S. 454 (1987), namely, whether a taxpayer may challenge a state's effective assessment ratio in federal district court by substituting the taxpayer's own methodology for estimating true market value in place of the state's reasonable methodology. As a matter of statutory interpretation, informed by principles of federalism, the answer should be "no."

The Commission respectfully suggests this conclusion flows from this Court's reasoning in *Department of Revenue of Oregon* v. *ACF Industries, Inc.*, 510 U.S. 332 (1994). Though the issue before the Court in *ACF Industries, Inc.* concerned the permissibility of property tax exemptions under subsection (b)(4) of the 4-R Act, and its holding was based first upon a statutory construction of the Act which does not apply here, the Court also found:

> Principles of federalism support, in fact compel, our view. Subsection (b)(4), like the whole of [49 U.S.C. § 11501], sets limits upon the taxation authority of state government, an authority we have recognized as central to state sovereignty. (citations omitted) When determining the breadth of a federal statute that impinges

> upon or pre-empts the States' traditional powers, we are hesitant to extend the statute beyond its evident scope. (citations omitted). We will interpret a statute to pre-empt the traditional state powers only if that result is 'the clear and manifest purpose of Congress.' (citation omitted).

510 U.S. at 345.

In applying these federalist principles, the *ACF* Court took into consideration that (1) the particular aspect of state taxation at issue in that case (property tax exemptions) reflected important state tax policies which pre-dated the 4-R Act, and (2) Congress made no expression of intent to limit the states' allowance of such exemptions either in the language of the statute or in its legislative history. 510 U.S. at 344-345. Each of these considerations is equally present with respect to a state's choice of property tax valuation methodology, and the application of federalist principles is no less compelling in the present case.

I. The Methodology for Estimating True Market Value of Railroad Property is an Important State Tax Policy Choice.

The proposition that a state's ability to raise revenue through taxation embodies a core sovereignty value is beyond dispute. This Court has consistently recognized that the states' taxing powers provide a crucial component of sovereignty necessary to support our federal system. *National Private Truck Council, Inc.* v. *Oklahoma Tax Comm'n*, 515 U.S. 582, 586 (1995), quoting *Dows* v. *City of Chicago*, 11 Wall. 108, 110 (1871) ("It is upon taxation that the several States chiefly rely to obtain the means to carry on their re-

spective governments, and it is of the utmost importance to all of them that the modes adopted to enforce the taxes levied should be interfered with as little as possible."); *Wisconsin* v. *J.C. Penney Co.*, 311 U.S. 435, 444 (1941) ("[The Constitution] does not demand of states strict observance of rigid categories nor precision of technical phrasing in their exercise of the most basic power of government, that of taxation.") Without that power, States will either have to forgo providing residents with needed services and protections or be relegated to a dependency upon the federal government.

A state's choice of reasonable valuation methodology is an important component of this fundamental power to tax. *See Louisville & Nashville R.R. Co.* v. *Dep't of Revenue, Fla.*, 736 F.2d 1495, 1498 (11th Cir. 1984) ("These arguments broach delicate issues implicating the State's traditional authority to select methods of valuation.") The Fourth Circuit acknowledged the importance of this choice to States and characterized a federal court review aimed at choosing among competing methodologies to produce a "true market value" as a "difficult, and arguably impossible task" which would "completely displac[e] the fact-finding and policy-making powers of state government." *Chesapeake Western Railway Co.*, 938 F.2d at 533. Indeed, some States have codified this policy choice in their statutes. *See, e.g.*, Ark. Stat. Ann. § 26-26-1607 (1987); Ala. Code § 40-21-6 (1975); Colo. Rev. Stat. § 39-4-102 (1999); and Fla. Stat. § 193.011 (2006). Petitioner's reading of the 4-R Act would make these legislative choices essentially meaningless for valuing railroad property.

The decision in *Union Pacific Railroad Co.* v. *State Tax Comm'n of Utah*, 716 F. Supp. 543 (D. Utah 1988), underscores the important policy nature of a State's choice of valuation methodologies, and explains why that choice

should be respected absent some evidence that the methodology was irrational. Following a valuation trial under the 4-R Act which lasted some six weeks, including 17 days of expert testimony on competing valuation methodologies, *id.* at 547, the district court stated its belief that a court could not empirically chose the best valuation methodologies, and should concern itself simply with determining whether the state's selected methodology is reasonable:

> From the beginning of this case, the court was willing to assume that there was such a thing as a "true market value" that could be determined objectively from evidence much the same way a court can determine a wrongfully discharged employee's back wages from evidence (citation omitted). ...
>
> From the six weeks of testimony in this case, however, certain things became apparent. ....
>
> From all the evidence presented it is clear there is more than one way to value a railroad. (citations omitted). Each method may represent what some buyers and sellers may actually do. All of the methods may be equally rational given their underlying assumptions....Each method or theory depends on certain assumptions that cannot ultimately be proved or disproved by reason alone nor replicated in experience. *Thus, this court cannot say that any one method is necessarily more rational than any other.*
>
> ....
>
> If one has a choice of methods and chooses a method with a rational footing and is consistent and even-handed in applying the

> method to all comparable properties, then conceptually the end result should be payment by taxpayers of a tax bill that is not disproportionate to the like payment of all other comparable taxpayers.

716 F. Supp. at 554-5, 556-7 (emphasis added); *See also, Chesapeake Western*, 938 F.2d at 531 ("The concept of true market value is inherently an approximation, in some sense a fiction, since there is no such thing as a perfect market. This is particularly true of railroad land...").

The deference accorded by this Court to a state's choice of formulary apportionment methodologies for income tax purposes presents an analogous situation, given the difficulty of arriving at a "true" income figure and the shared conceptual foundation of formulary apportionment of income and property tax jurisprudence. In *Underwood Typewriter Co.* v. *Chamberlain*, 254 U.S. 113 (1920), this Court considered whether Connecticut's apportionment of a taxpayer's net income was discriminatory. The Court first recognized the analogy to property tax and held "[a] tax is not obnoxious to the commerce clause merely because imposed upon property used in interstate commerce ... (citations omitted) whether it be deemed a property tax or a franchise tax," *id.* at 119-120, then went on to find that the state's choice of apportionment formula must be upheld unless it is "inherently arbitrary" or produces an "unreasonable result":

> The legislature, in attempting to put upon this business its fair share of the burden of taxation, was faced with the impossibility of allocating specifically the profits earned by the processes conducted within its borders. It, therefore, adopted a method of apportionment

> which, for all that appears in this record, reached, and was meant to reach, only the profits earned within the state. 'The plaintiff's argument on this branch of the case,' as stated by the Supreme Court of Errors, 'carries the burden of showing that 47 per cent. of its net income [the amount that resulted from the State's formulary calculation] *is not reasonably attributable*, for purposes of taxation, to the manufacture of products from the sale of which 80 per cent. of its gross earnings was derived after paying manufacturing costs.' The corporation has not even attempted to show this... There is, consequently, nothing in this record to show that the method of apportionment adopted by the state was *inherently arbitrary* (footnote omitted), *or that its application to this corporation produced an unreasonable result.*

254 U.S. at 121 (emphasis added).

This Court's more recent income tax decisions are consistent with *Underwood Typewriter*. They recognize the importance of a state's choice of formulary apportionment methodologies and have upheld them despite their inherent nature as approximations and the impossibility of demonstrating that those formulas produce precise apportionment of income. For example, in *Moorman Manufacturing* v. *Bair*, 437 U.S. 267 (1978), the Court noted:

> The single factor formula used by Iowa, therefore, generally will not produce a figure that represents the actual profits earned within the State. But the same is true of the Illinois three-factor formula. Both will occasionally over-

> reflect or under-reflect income attributable to the taxing State. Yet despite this impression, the Court has refused to impose strict constitutional restraints on a State's selection of particular formula. (footnote omitted).

437 U.S. at 273; *See also, Mobil Oil* v. *Vermont,* 445 U.S. 425 (1980) (declining to limit state methods for sourcing income from dividends); *Container Corporation of America* v. *Franchise Tax Board,* 463 U.S. 159 (1983) (rejecting claim that California's apportionment formula distorted the profitability of the taxpayer's foreign operations where evidence was based on different accounting methodology).

Clearly, this Court has recognized the vital importance to States of upholding their ability to adopt reasonable formulas for estimating various forms of taxpayer value where it would be impossible to say objectively that any one formula produces the most accurate result. The alternative would be a free-for-all process where federal courts would be forced to make quasi-legislative policy choices between competing reasonable accounting methodologies.[5]

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[5] In the analogous context of rate-making, this Court held in *Colorado Interstate Gas Company* v. *Federal Power Commission,* 324 U.S. 581 (1945):

> Rate-making is essentially a legislative function. (citation omitted). When Congress, as here, fails to provide a formula for the Commission to follow, courts are not warranted in rejecting the one which the Commission employs unless it plainly contravenes the statutory scheme of regulation.

324 U.S. at 589.

II. Neither the Language of the Act, Nor Its Legislative History, Indicates Congressional Intent to Interfere With This Important State Policy Choice by Allowing Federal District Court Review.

In the years prior to the enactment of the 4-R Act, many States, by statute or constitution, classified railroad property separately from other commercial and industrial property, and imposed a higher assessment ratio on that railroad classification than on the commercial and industrial class. *See Nashville, Chattanooga & St. Louis Ry.* v. *Browning*, 310 U.S. 362 (1940) (States were permitted to classify carrier property in a separate class from other taxable property in the same jurisdiction.).

The often-referenced "Doyle report", S. Rep. No. 87-445 (1961), characterized this separate classification of railroad property as "a studied and deliberate practice of assessing railroad property as a proportion of full value substantially higher than other property." *Id.* at 458. Although, as Petitioner points out, some federal and state courts had "voided discriminatory tax assessments and levies on common carrier property" through express state-law protections or amendments, those protections did "not reach the situation . . .where the express provisions of State law or a State constitution permit such discriminatory treatment." S. Rep. No. 90-1483, at 6-7 (1968). Congress recognized that protections for railroads were limited absent remedial federal legislation and concluded "such discrimination must be ended." S. Rep. No. 92-1085, at 7 (1972). *See* Brief of Petitioner, pp. 3-4.

There is no doubt Congress accomplished this particular goal in subsection (b)(1) of the 4-R Act which clearly prohibits a State from imposing an assessment ratio for railroads

that is higher than the assessment ratio imposed on other commercial and industrial property, whether by state statute or constitution. Nor did Congress leave any doubt that subsection (c) of the Act allows federal district court review to prevent a facial violation of subsection (b)(1).

It is also clear that Congress intended federal district court review pursuant to subsection (c) to go beyond facial assessment ratios and include effective assessment ratios. Certainly, subsection (c) allows federal district courts to consider the effective aggregate assessment ratio for commercial and industrial property by testing the accuracy of state valuations of that property, in the aggregate, through the use of a sales ratio study (a study that compares sale prices of various commercial and industrial properties to the state's previous estimates of the value of those properties). Furthermore, this Court has found that the language of subsection (c) allows federal district courts to compare this effective aggregate C&I assessment ratio to the effective assessment ratio for a particular taxpayer's railroad property by considering the factual determinations to which the state's preferred railroad valuation methods were applied in a particular case. *Burlington No. R. Co.* v. *Okla. Tax Comm'n,* 481 U.S. at 462-3.

What is not clear under either subsection (b)(1) or subsection (c) is whether federal district court review of effective assessment ratios for individual railroads includes not just a review of the application of the State's reasonable valuation methodology, but also a review of that methodology itself. In fact, this Court has expressly noted, but reserved judgment, on that issue. *Id.* at 463, n.5.

At the time of the 4-R Act's enactment, Congress was clearly aware of the role of states' valuation methodologies in determining effective assessment ratios, and of the impor-

tance of this policy choice to the States. Not only did the Doyle report provide significant explanatory background on the various different methodologies used by states in valuing railroad property, S. Rep. No. 87-445, at 452-59, 475-81, it also expressed the opinion that discrimination against railroads "results" in large measure from "outmoded assessing procedures" employed at the state level. *Id.* at 448. It contended that "the applicable [state] statutes contain few guideposts for the assessor or prescription of the factors, and the weight to be accorded thereto, in arriving at 'full value' of railroad—or any other—real estate," and railroad property is "often valued under divergent theses, processes and procedures and too often inconsistently from year to year." *Id.* at 568. *See also* Brief of Petitioner, p. 36.

Despite the information and opinions contained in the Doyle report, Congress did not see fit to remedy that situation by pre-empting the states' choice of valuation methodology in subsection (b), nor is there any explicit grant of federal district court authority to review these methodologies in subsection (b)(1) or (c).

Indeed, legislative history provides some indication that Congress consciously intended *not* to interfere with States' choice of railroad valuation methodology. In S. Rep. No. 90-1483, the Senate Committee on Commerce stated its intent that the term "true market value" as used in the bill under consideration (S. 927), should have the meaning set forth in "Appendix B," which provided:

> [The bill] does not suggest or require a State to change its assessment standards, assessment practices, or the assessments themselves. It merely provides a single standard against which all affected assessment must be measured in or-

> der to determine their relationship to each other. It is not a standard for determining value; it is a standard to which values that have already been determined must be compared.

S. Rep. No. 90-1483, App. B (1968)[6]

In *Chesapeake Western*, the Court noted the testimony of a railroad executive on another earlier version of Section 11501 stating:

> The standards and methods of valuation that any State wishes to use would be totally unaffected by this legislation. H.R. Rep. 91-138 (1970) (statement of Philip Lanier).

938 F.2d at 531.

Despite the legislative history contained in the Doyle report indicating that Congress was well aware of the importance, role and then-current status of state valuation methodologies, nowhere in the Act does Congress plainly express any intent to displace these methodologies, either by direct federal pre-emption or by allowing federal district

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[6] As noted by the Court in *Louisville & Nashville R.R. Company* v. *Dep't of Revenue, Fla.*:

> [W]ith the passage of the 4R Act, Congress capped a seventeen-year effort to equalize railroad property taxes. S. 927, one of several precursors, was virtually a mirror image of section 11503 [now 11501]. The legislative history of nearly identical antecedent proposals is unquestionably relevant and material to a complete understanding of the text before the court. (citation omitted).

736 F.2d 1495, 1498, n.6.

court review in contravention of the Tax Injunction Act. On the contrary, the absence of any language expressly addressing state railroad valuation methodologies, and statements in the legislative history assuring those methodologies were left unaffected, indicate Congress ultimately concluded, despite the Doyle report's criticisms, to forgo interfering with states' choice of reasonable railroad valuation methodology.

III. Where Congress Has Not Expressed an Intent to Allow Federal District Court Review of an Important State Policy Choice, Principles of Federalism Compel Against Allowing Such Review.

It is a cornerstone of our federalist system that Congressional intent to pre-empt state tax sovereignty must be made clear and explicit. *See ACF Industries, Inc.*, 510 U.S. at 345, ("We will interpret a statute to pre-empt the traditional state powers only if that result is the 'clear and manifest purpose of Congress.'" *quoting from, Rice* v. *Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947).). As this Court stated in *Cipollone* v. *Liggett Group, Inc.*, 505 U.S. 504 (1992):

> The principles of federalism and respect for state sovereignty that underlie the Court's reluctance to find preemption where Congress has not spoken directly to the issue apply with equal force where Congress has spoken, though ambiguously. In such cases, the question is not *whether* Congress intended to pre-empt state regulation, but to what *extent*. We do not, absent unambiguous evidence, infer a scope of pre-emption beyond that which clearly is mandated by Congress' language.

505 U.S. at 533. *See also, Gregory* v. *Ashcroft*, 501 U.S. 452 (1991) (clear or plain statement rule applied).

As *ACF Industries, Inc.* illustrates, the doctrine that state preemption will be found only where clearly and manifestly expressed applies firmly in the field of state taxation. Had Congress intended to interfere with the important, pre-existing, state authority to choose reasonable valuation methodologies for railroads, "we are confident it would have spoken with clarity and precision." 510 U.S. at 344. In the absence of such clarity, principles of federalism compel the finding that a State's choice of reasonable valuation methodology should not be subject to review and potential substitution with alternative methodologies.

CONCLUSION

The Commission respectfully counsels that the decision of the Eleventh Circuit Court of Appeals in this case be upheld.

Respectfully submitted,

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